IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Writ Petition No.22362 of 1997
DATED 9-3-2007

BETWEEN
G.Mohan Prasad

.. Petitioner

And

The Managing Director, APSRTC,
Musheerabad, Hyderabad and 5 others.

.. Respondents

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.22362 of 1997

ORDER:

The petitioner herein seeks to have the order dated 28.8.1997, whereunder one Sri L.R.Subhash and the 5th respondent herein were selected for the post of Assistant Manager (Purchase), set aside as arbitrary and illegal.

The petitioner, a Superintendent in the purchase department was considered for promotion to the post of Assistant Manager (Material), in the selection process held in August, 1997 in accordance with the circular dated 13.2.1989 which prescribes the criteria for selection to supervisory posts. Contending that his non-

selection was arbitrary and illegal, inasmuch as entries in the Merit Rating Reports (MRR) were made without any objective criteria and based only on the subjective consideration of the respective unit officers concerned at their whims and fancies, the petitioner would seek to have both the selections set aside.

Sri V.Mallik, learned counsel for the petitioner, would point out that the Merit Rating Reports of the petitioner for the years 1995 and 1996 were, in fact, not available and were called for urgently on 13.8.1997, that these reports were prepared just a couple of days prior to the date of selection held on 18.8.1997 and, but for the low marks given to him in the Merit Rating Reports, the petitioner would have been selected as an Assistant Manager (Material) as his performance was far better than Sri L.R.Subhash, and the 5th respondent herein, who were selected and appointed as Assistant Manager (Material).

Sri R.Manmadha Reddy, learned standing counsel for the respondent Corporation has placed before this Court the relevant records. A perusal thereof would indicate the marks obtained by each of these candidates, which are detailed hereunder in a tabular form.

	Petitioner	Respondent No.5	L.R.Subhash
MRR	28	32	29
Length of service	15	15	25
Interview	2	6	6

Addl.Qualifications	2	2	
Total	47	55	60

While the total marks received by the petitioner was 47, Sri L.R.Subhash secured 60 marks and the 5th respondent secured 55 marks and since they had secured more marks than the petitioner, they were appointed as Assistant Managers (Material) and not the petitioner herein. The fact that the post of Assistant Manager (Material) is to be filed in by selection, on a comparative assessment of the relative merits of the candidates concerned, is not in dispute. It is also not in dispute that the 5th respondent and Sri L.R.Subhash secured more marks than the petitioner. The contention on the other hand is that the Merit Rating Reports, which constitutes 50% of the total marks was prepared at the whims and fancies of the concerned officers.

Sri V.Mallik, learned counsel for the petitioner, would draw attention of this Court to the averments in the counter affidavit that in view of the adverse remarks received by the petitioner, he was denied promotion as also to the proceedings dated 19.2.1999 whereunder low ratings in the Merit Rating Reports are required to be communicated to the officer concerned. The complaint of the petitioner, as vehemently put across by Sri V.Mallik, is that Merit Rating Reports for the years 1995-96 were in fact prepared only after 13.8.1997, just a couple of days prior to the actual date of selection though they should have been prepared in the relevant years. It is contended that since these reports were hurriedly

prepared on the eve of the selection, the low rating given to the petitioner would show that the respondents intended to deprive him of promotion to the post of Assistant Manager (Material).

A perusal of the records would show that while the Merit Rating Reports of the petitioner for the year 1994 were prepared on 5.5.1995, the Merit Rating Report for the year 1995 does not even contain the date on which it was prepared by the reporting officer. The remarks of the counter-signing officer is dated 16.8.1997, which was just a couple of days prior to the date of selection. The comments in the Merit Rating Reports for the year 1996, prepared by the reporting officer on 4.8.1997 are "Very arrogant and takes little interest in the job, lacks supervisory qualities". Though the counter-signing officer has affixed his signature on 8.8.1997, the remarks column has been left blank. The manner in which the MRR reports were prepared undoubtedly leaves much to be desired. It also indicates the casual manner in which these reports are prepared. The fact however remain that in the Merit Rating Report for the year 1996, the petitioner has been rated poor.

Sri R.Manmadha Reddy, learned standing counsel would submit that mere poor rating in the Merit Rating Reports does not amount to an adverse remark, notwithstanding the averments in the counter affidavit styling them to be so that the petitioners marks in the Merit Rating Reports were taken into consideration while making a comparative assessment of the relative merits of each of the candidates who were eligible for selection to the post of Assistant Manager (Material) and since, in the Merit Rating Reports for the year 1996, the petitioner's performance had been assessed as poor, he was rightly assigned lesser marks when compared to the other

two candidates.

It is well settled that it is not for this Court, under Article 226 of the Constitution of India, to sit in appeal over the decision of the Selection Committee nor is it for this Court to make a detailed or minute examination of the marks assigned under each of these parameters, to the candidates who participated in the selection process. The fact remains that the petitioner's performance being assessed as 'poor' in the Merit Rating Reports for the year 1996 has resulted in his not being selected to the post of Assistant Manager (Material). As to whether the respondents were justified in rating him as 'poor' is not for this Court to minutely examine, in proceedings under Article 226 of the Constitution of India, for the jurisdiction is not appellate.

Sri R.Manmadha Reddy, learned standing counsel would point out that, in any event, the petitioner has since retired from service and he would not now be entitled to be appointed to the post of Assistant Manager (Material). I see no reason, therefore, to interdict the selection of the 5th respondent as Assistant Manager (Material). The other selected candidate Sri L.R.Subhash has not even been arrayed as a respondent in the writ petition and, as such, the question of examining the validity of his selection does not arise.

Sri V.Mallik would place reliance on a judgment of this court in **K.Mohanlal v. Vice Chairman and Managing Director, APSRTC, Hyderabad**[1] to contend that since the very Regulations which prescribe promotion to the post of Assistant Manager (Material) have been held by this Court as not to have come into force, the entire selection process culminating in the selection of the

5th respondent and Sri L.R.Subhash must be declared as illegal, Sri R.Manmadha Reddy, learned standing counsel would submit that an appeal has been preferred against the said order in W.A No. 2515 of 2005 but the order in the writ petition has not been suspended or stayed. This question does not necessitate examination in this writ petition for the petitioner himself seeks promotion to the post of Assistant Manager (Material). Accepting his contention that the Regulations, which provide for a channel of promotion to the post of Assistant Manager (Material), itself have not come into force would mean that the petitioner is also not entitled for being considered for promotion as Assistant Manager (Material). The petitioner having retired from service, cannot be heard to say that this Court should set aside all appointments by the APSRTC.

This does not however mean that the respondent Corporation can absolve itself of its failure to communicate the ratings assigned in the Merit Rating Reports, to the petitioner. The Proceedings dated 19.2.1999 addressed to one Smt.P.Kripa Bai would show that the low rating in the Merit Rating Reports are being communicated to the employees concerned. The petitioner's rating 'poor' is undoubtedly a low rating and would necessitate it being communicated. Communication of such low rating would not only enable employees to improve their performance but would also enable them to represent their grievance to the competent authority. These are all, however, matters for the appropriate authority to consider and not for this Court to examine in proceedings under Article 226 of the Constitution of India. The respondents shall, within a period of four weeks from the date of receipt of a copy of this

order, communicate the Merit Rating Reports for the years 1994, 1995, 1996 and 1997 to the petitioner herein who shall thereupon be entitled to submit a representation to the 2nd respondent within four weeks thereafter. The 2nd respondent shall examine the petitioner's grievance and consider his representation in accordance with law and pass appropriate orders thereupon within two months from the date of receipt of such representation.

The writ petition is accordingly disposed of. However, in the circumstances without costs.

RAMESH RANGANATHAN,J

Dt: 9.3.2007
msv.

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[1] 2006(3) ALD 304